

**OFFICE OF THE UNITED STATES TRUSTEE
EASTERN DISTRICT OF VIRGINIA
CHAPTER 11 GUIDELINES**

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1. GENERAL REQUIREMENTS

a. **COPIES:** File with the Clerk of the Bankruptcy an original of all papers, including reports. One copy of all papers must be served on the appropriate U.S. Trustee's office AND the creditors' committee, if one has been appointed, by serving the committee's attorney or chairman.

b. **CHANGE OF ADDRESS:** The debtor must immediately provide written notice to the Clerk of the Bankruptcy Court and the U.S. Trustee's office of any change of address or telephone number.

2. OPERATING RULES

You may operate your business in its ordinary course. The following exceptions require that a Bankruptcy Court order be entered before you can:

a. Use "cash collateral" (cash, receivables, proceeds subject to liens). (Bankruptcy Code §363; Bankruptcy Rule 4001).

b. Employ or compensate an attorney, accountant, or any other professional, including one hired before the filing of the petition. (Bankruptcy Code §327 and §330; Bankruptcy Rule 2014).

c. Pay pre-petition wages.

d. Pay any other unsecured pre-petition debt.

3. OTHER ADMINISTRATIVE REQUIREMENTS

a. **Banking:** You have 15 days from petition date to close out old accounts, open new "debtor-in-possession" accounts, and file your depository report. The debtor must ensure that all accounts are deposited at an authorized depository and that estate funds to not exceed the insured or collateralized limits of that approved depository. (See attached list of "approved" depositories).

b. Insurance: You must maintain appropriate insurance coverage and provide a report of insurance to the U.S. Trustee's office within 15 days of the filing of the petition. (Report of insurance form is attached)

c. Monthly Operating Report: Reports on your financial results are required the 15th of every month for the preceding month. [Bankruptcy Code §704(8); Bankruptcy Rule 2015] (Monthly operating report forms are attached). *NOTE: These forms are available on diskette and are offered in Lotus, Excel, or Quattro Pro. Please contact our office to have these forms e-mailed to you.*

d. Quarterly Fees: For every calendar quarter, or part of a quarter, the case stays in a Chapter 11, a fee based on disbursements must be paid to the U.S. Trustee. The fee is due within 30 days after the end of the calendar quarter. [28 U.S.C. §1930(a)(6)]

e. Post-Petition Tax Obligations: Using IRS Form 6123, pay post-petition federal payroll taxes timely. Pay state and local taxes timely as well. File are required tax returns timely.

All of the above requirements are contained within the Consent Order Conditioning Rights of Debtors in Possession which is required for all debtors operating in the Eastern District of Virginia. Failure to comply with the terms of the order or these guidelines may result in the filing of a motion to convert or dismiss or other sanctions by the U.S. Trustee.

TABLE OF CONTENTS

	Page Number
1. Books and Records	4
2. Bank Accounts and Deposits	4
3. Insurance	5
4. Monthly Operating Reports	6
IRS Form 6123 - Verification of Tax Deposit	
5. Quarterly Fees	6
6. Creditors' Committees	7
7. Payments by Debtors in Possession	8
8. Employment Compensation of Professionals	9
9. Disclosure Statements and Plans	11
10. Local Rules	15

1. BOOKS AND RECORDS

The books and records of the debtor must be closed out as of the filing date of the petition and new books and records opened immediately covering the post-petition period of the debtor in possession. The debtor must keep a proper record of debtor's earnings, expenses, receipts, disbursements, and all obligations incurred and transactions made in the operation of the business and in the management, preservation and protection of the debtor's property.

2. BANK ACCOUNTS AND DEPOSITS

It is imperative that a chapter 11 debtor immediately close its old bank accounts and establish a new set of accounts. The date of filing of the case is an important date and, if new accounts are not established, the line separating pre-petition and post-petition transactions and obligations may be blurred. In addition, the establishment of separate bank accounts for specific purposes during the chapter 11 assists the debtor in keeping monies separate and available for their intended designee.

The debtor in possession must immediately close its existing bank accounts and establish three new accounts as of the date of the filing of the bankruptcy case. The three new accounts are:

1. a general expense account;
2. a payroll account; and
3. a tax escrow account. (All funds required to be escrowed under state or federal law shall be deposited in the tax account and may be disbursed only for the purpose for which they are set aside.

All checks printed for these accounts should indicate "Debtor in Possession" clearly on their face. Checks are to be pre-numbered by the bank and should also indicate the type of account (e.g. general, payroll, or tax) on the face of each check.

All funds held by the bankruptcy estate must be deposited into an account with a financial institution designated by the U.S. Trustee as an authorized depository. The Debtor in Possession accounts shall not exceed the insured or collateralized limits of that approved depository. You should contact the U.S. Trustee's office to determine whether a financial institution has been approved as a depository for estate funds.

If the aggregate funds in any one banking institution or depository exceed \$100,000, the U.S. Trustee must be notified. The debtor is responsible for verifying that the depository meets federal requirements by collateralizing deposits in excess of \$100,000 with a bond or pledge of securities. Bankruptcy Code section 345. The U.S. Trustee may require removal of estate funds from depositories which

do not meet collateralization requirements.

The opening of bank accounts must be reported to the U.S. Trustee on the attached deposit report form no later than fifteen (15) days after the filing of the case. A copy of the reports should be provided to the Court.

If the debtor possesses cash collateral, additional and separate cash collateral accounts must be established and maintained in accordance with §363(c)(4) of the Bankruptcy Code. Debtors may not use cash collateral without the consent of the secured creditor or a Court order. [Bankruptcy Code §363(c)(2)]

Any waiver or modification of bank account requirements must be authorized in writing by the Office of the U.S. Trustee, upon request of the debtor, on showing of good cause.

3. INSURANCE

An essential element for adequate protection of a secured creditor's interest in collateral and an unsecured creditor's interest in the equity of any asset is the presence of insurance coverage.

The debtor in possession, within fifteen (15) days after the filing of the petition, shall provide the U.S. Trustee a Report of Insurance using the attached form. A copy of the insurance policy, binder, or certificate of insurance must be attached to the Report of Insurance. Each policy shall disclose the type and extent of coverage, effective dates, name of insurance carrier and the agent's name, address and telephone number. The debtor must be listed as the insured party and the policy should indicate "Debtor in Possession" on its face. The debtor is responsible for including the address of the U.S. Trustee on the cancellation notice for each insurance policy. The certificate of insurance must show the U.S. Trustee as the certificate holder.

Generally, the following types of insurance are required:

- a. General Comprehensive/Public Liability;
- b. Casualty Coverage (tangible assets susceptible to loss by fire, weather, theft, vandalism, etc.);
- c. Worker's Compensation;
- d. Vehicle;
- e. Product Liability;
- f. Other insurance customarily maintained in business in which debtor is engaged.

Insurance coverage must be kept current throughout the Chapter 11 case. Additional reports are required each time coverage is renewed, changed or lapses.

4. MONTHLY OPERATING REPORTS

A debtor in possession shall file an original monthly operating report with the Bankruptcy Court. A copy of each operating report shall be served on the U. S. Trustee. The operating report must be filed with the court, and a copy served on the U. S. Trustee, no later than the 15th day of each month for operations or financial activity occurring in the preceding calendar month.

A report form is attached depending on whether the debtor operates on an accrual basis, a cash basis or is an individual. Any modification of the report form must be authorized in writing by the U. S. Trustee, upon request by the debtor, on showing of good cause. Any financial report form which provides substantially the same amount of information as requested in the attached forms will be authorized for use by the debtor.

5. QUARTERLY FEES

28 U.S.C. § 1930(a)(6) requires that, in addition to the filing fee, a quarterly fee must be paid in all Chapter 11 cases to the U. S. Trustee for each quarter, including any fraction of a quarter the debtor is in Chapter 11. H.R. 3610, signed into law on September 30, 1996, (Public law 104-208), amends the Chapter 11 fee schedule based on quarterly disbursements that is set forth at Title 28 U.S.C., § 1930(a)(6). The new quarterly fee schedule, displayed below, applies to quarterly fees beginning with the fourth quarter of calendar year 1996. The quarterly fee is based on the amount of disbursements during the quarter, with a minimum fee of \$250.00 and a maximum fee of \$10,000.00 per quarter.

Public Law 104-99, which was signed into law on January 27, 1996, amends Title 28 U.S.C. to provide that Chapter 11 quarterly fees will apply to cases filed under Chapter 11 of the Bankruptcy Code until such time as the case is converted to another chapter of the Code or dismissed by the Bankruptcy Court. Effective January 27, 1996, all cases with confirmed reorganization plans which are pending before the Bankruptcy Court will be required to make quarterly fee payments based on disbursements until the case is converted to another chapter of the Code, dismissed by the Court, or closed by Court order.

<u>Total Quarterly Disbursements</u>		<u>Quarterly Fee</u>
\$ 0.00	to \$ 14,999.99	\$ 250.00
\$ 15,000.00	to \$ 74,999.99	\$ 500.00
\$ 75,000.00	to \$ 149,999.99	\$ 750.00
\$ 150,000.00	to \$ 224,999.99	\$ 1,250.00
\$ 225,000.00	to \$ 299,999.99	\$ 1,500.00
\$ 300,000.00	to \$ 999,999.99	\$ 3,750.00
\$ 1,000,000.00	to \$ 1,999,999.99	\$ 5,000.00
\$ 2,000,000.00	to \$ 2,999,999.99	\$ 7,500.00
\$ 3,000,000.00	to \$ 4,999,999.99	\$ 8,000.00
\$ 5,000,000.00	and above	\$10,000.00

Make checks payable to: U. S. Trustee. The account number should be written on the face of the check. Payments should be mailed to:

U. S. Trustee Payment Center
P. O. Box 198246
Atlanta, Georgia 30384

Any debtor not receiving a statement for the fee, or having questions about the fee, should contact the U. S. Trustee's office. If for some reason you fail to receive a preprinted fee statement, you are still responsible for payment of the fee in a timely manner.

If any check is returned for non-sufficient funds, then all future quarterly fee payments must be made by cashier's check, certified check or money order.

FAILURE TO PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR DISMISSAL OF YOUR CASE. [11 U.S.C. § 1112(b)(10)]

6. CREDITORS' COMMITTEES

Section 1102 of the Bankruptcy Code requires the U. S. Trustee to appoint a creditors' committee composed of unsecured creditors willing to serve. The committee shall be appointed from the list of the 20 largest unsecured creditors submitted with the petition.

Shortly after the filing of the petition, the U. S. Trustee invites several of the debtors' largest unsecured creditors to serve on the unsecured creditors' committee. Potential committee members receive information explaining the duties and responsibilities of the creditors' committee. If a minimum of three creditors respond affirmatively, the U. S. Trustee appoints an unsecured creditors' committee of up to seven creditors. The report of selection of the creditors' committee is filed with the Court.

Section 1103(d) of the Bankruptcy Code required the debtor to meet with the creditors' committee as soon as practicable after the appointment of the committee to transact such business as may be necessary and proper. The committee may use the section 341 meeting of creditors or a time immediately prior to organize and meet with the debtor.

Section 1102 authorizes the U. S. Trustee to appoint a committee of other creditors of a common type or class if such appointment is necessary to assure their adequate representation. For example, the U. S. Trustee may appoint under certain circumstances a committee of timeshare holders, limited partners or bondholders. Requests for the appointment of other committees should be addressed to the U. S. Trustee's office.

7. PAYMENTS BY DEBTOR IN POSSESSION

Under 11 U.S.C. §1107 and §1108 a debtor in possession is authorized to continue to operate its business in its normal manner. There are certain kinds of debts and expenses that the debtor is required to pay and which do not necessitate an order from the Court. Leave from the Court, however, must be sought prior to using funds upon which any perfected security interest may be attached. Unless otherwise ordered by the Court or prohibited by the Bankruptcy Code, the debtor in possession is authorized to pay from time to time, out of funds available for such purposes, the following:

- a. All taxes or other governmental assessments incurred since the filing of the petition under Chapter 11 in the operation of the business and in preservation and maintenance of the property and assets of the debtor.
- b. All proper expenses and obligations incurred in operating the business and preserving and maintaining the property and assets of the estate, including reasonable wages, salaries and compensation to all managers, agents and employees of the business. The debtor may employ, discharge and fix the compensation, salaries and wages for all managers, employees, or agents of the debtor as it deems necessary and advisable for the proper operation of the business and for the management, preservation and protection of the property. The debtor shall not employ any additional personnel, enter into any new contracts for services not in the ordinary course of business nor increase the compensation of any manager, employee or agent not in the ordinary course of business without prior notification to any appointed creditors' committee and to the U.S. Trustee.
- c. Obligations for merchandise, supplies and services incurred in the ordinary operation of the business and in preservation and maintenance of the property and assets of the debtor since the filing of the petition under Chapter 11.
- d. Quarterly fee payments to the U.S. Trustee pursuant to 28 U.S.C. §1930(a)(6).
- e. ~~Payments may be made to secured creditors in some instances.~~ The debtor should consult with counsel concerning payments to secured creditors.

The debtor's inability to pay its ordinary post-petition operating costs as they become due may indicate an inability of the debtor to reorganize.

There are specific prohibitions and restrictions against payment of certain debts incurred prior to the filing of the petition without Court authorization. The debtor is cautioned to consult with its attorney regarding any payment of pre-petition debts.

Debtors may not use cash collateral without the consent of the secured creditor or a Court order. [Bankruptcy Code §363(c)(2)] If the debtor possesses cash collateral, additional and separate cash collateral accounts must be established and maintained in accordance with §363(c)(4) of the Bankruptcy Code.

11 U.S.C. §363(b) requires a debtor to obtain prior Court approval for the use, sale or lease of estate property when such use, sale or lease of estate property is not in the ordinary course of business. The debtor shall serve the U.S. Trustee with a copy of any such application filed with the Court.

8. EMPLOYMENT AND COMPENSATION OF PROFESSIONAL PERSONS IN CHAPTER 11 CASES

a. APPLICATIONS AND ORDERS FOR EMPLOYMENT OF PROFESSIONAL PERSONS.

The original application and order for the employment of a professional should be sent directly to the U.S. Trustee's office for endorsement and delivery to the Court.

All such applications must comply with Bankruptcy Rule 2014 by showing:

- (1) specific facts necessitating employment;
- (2) name and proposed compensation for the professional; and
- (3) an affidavit of disinterestedness by the person to be employed.

The order of employment should not set an hourly rate or rate of compensation except in the instance of an order employing an auctioneer or appraiser in which Bankruptcy Rule 6005 requires the compensation to be fixed by the order. Proposed orders submitted with appointments for employment should expressly condition the approval of compensation as "subject to further review and order of the Court".

Conflicts of Interest

It may be grounds for the filing of an objection to an application for employment in cases where the proposed attorney for a corporate debtor also represents a director, officer, or principal.

Similarly, an objection may be entered in cases where the proposed attorney for a limited partnership also represents a general partner.

An applicant for the position of attorney to a creditors committee who continues representation of a creditor of the same class as represented by the committee must expressly state that an actual conflict does not exist.

Successor Counsel

Successor counsel should also file an application to be employed following these guidelines. Notification to the Court of the change of counsel will not suffice. The U.S. Trustee believes that, in order for a professional to be compensated, each professional must comply with the provisions of 11 U.S.C. §327 and §329 and Bankruptcy Rule 2014.

The outgoing attorney should file an application for compensation and reimbursement within 30 to 60 days of appointment of the successor counsel.

Nunc Pro Tunc

Employment of professionals should be contemplated by the debtor and each professional should ensure that an application for employment is filed prior to the rendering of services. Absent extraordinary circumstances, nunc pro tunc applications will be objected to by the U.S. Trustee.

Every professional should be aware that their compensation must be reviewed and approved by the Bankruptcy Court before payment and that their compensation requests may be reduced pursuant to 11 U.S.C. §330.

b. PROFESSIONAL FEES AND EXPENSES

Bankruptcy Rule 2016(a) requires that an application for compensation and reimbursement contain a detailed statement of (1) the services rendered; (2) the time expended; (3) the expenses incurred; and (4) the amounts requested. All applications should recite the date the order approving the employment was entered.

See attached guidelines for drafting professional fee requests.

9. DISCLOSURE STATEMENTS AND PLANS

Purpose. The purpose of this memorandum is to set forth the procedures and standards to be used by personnel of this office in reviewing Disclosure Statements and Plans of Reorganization in Chapter 11 bankruptcy cases. Copies of this memorandum are provided to the members of the Bankruptcy bar for their information. Use of or adherence to these standards by debtor's attorneys is not mandatory, and the standards may be altered, increased or waived for good cause in the discretion of the reviewer. The adequacy of Disclosure Statements and Plans is always subject to the approval of the Court.

Standards for Review.

1. Boilerplate.

- a. Should not contain disclaimers or statements that have no relevance in the context of this case which could be misleading.
- b. Any reference to cram-down should also have a statement that the availability of cram-down is a legal matter to be resolved in the context of hearing on confirmation of the Plan.

2. Required Statements.

- a. That any representations made to secure acceptance of the Plan which are not in the Disclosure Statement should be reported to the Court, Creditors' Committee and the U.S. Trustee.
- b. Plan summary should contain a statement that the Plan is a legally binding arrangement and should be read in its entirety as opposed to relying on the summary.
- c. That Bankruptcy Court approval of the Disclosure Statement is not a decision by the Court on the merits of the Plan.
- d. Information as to which classes are impaired and may vote on the Plan.
- e. The voting requirements of §1126 should be set forth.
- f. Information as to where ballots are to be sent (not Bankruptcy Court or Office of U.S. Trustee) should be provided.
- g. Deadline for voting.

3. Definitions. Disclosure Statements and Plans with technical or sophisticated terms should contain a definitional section.

4. Description of Debtor's Business should be included.
5. Discussion of Financial Difficulties. The Disclosure Statement should set forth what problems brought about the need for this particular debtor to file for relief under Chapter 11 of the United States Bankruptcy Code. Without a disclosure of this information, it is impossible for the average creditor to ascertain if the debtor has taken any steps toward rectifying the circumstances that brought about the debtor's current problems.
6. Financial Statements should be included with a recent Balance Sheet and one at the commencement of the case and with an Income and Expense or Cash Flow Statement for at least the prior six months. The Debtor may use the formats set out in the attached forms, but other forms are acceptable as well.
7. Material Post-Petition Events should be described including any borrowings, issuances of securities, and sales or transfers of assets. If there are no such events, there should be a representation to that effect.
8. An Outline of the Plan should be provided. The timing of payments to creditors should be clarified in order that creditors may know when payments will begin and the frequency with which they will continue throughout the payment period. Also, the payout period should be defined (e.g., five years).
9. The Means of Effectuating the Plan should be provided including the source and application of funds and terms of any material agreements executed or proposed.
10. Securities to be Issued should be described including:
 - a. Dividend rights;
 - b. Liquidation rights and preferences;
 - c. Voting rights;
 - d. Sinking fund payments;
 - e. Conversion features;
 - f. Preemptive rights;
 - g. Redemptive provisions;
 - h. Provisions relating to interest, amortization and maturity;
 - i. Provisions restricting the issuance of additional securities;
 - j. Special rights and preferences;
 - k. Any exemptions from Federal or State securities laws by virtue of §1145(a);
 - l. Any anticipated post-confirmation distribution of ownership of equity securities;
 - m. Identity of any possible markets;
 - n. Applicable law as to resale of securities.

11. Projections should be provided including:

- a. Future Earnings;
- b. Cash Flow and Earnings statements;
- c. All Plan payments factored into cash flow projections;
- d. Comparison of earlier projections with actual results;
- e. All underlying assumptions must be disclosed.

There should be a discussion as to what factors should be looked at to determine what will enhance or detract from the profitability of the debtor. To make an informed decision on this Plan, it is necessary for creditors to understand and realize what the debtor is relying on to project this profitability. A comparison between income and sales projections and the present situation is helpful in resolving this ambiguity. In conjunction therewith, all factors relied upon in making these projections should be set forth.

12. Management information about officers and directors should include:

- a. Identity;
- b. Pre and post-confirmation changes;
- c. Business experience;
- d. Age, tenure, and retirement;
- e. Compensation;
- f. Other information (crimes, regulatory proceedings, prior bankruptcy, receivers).

13. Controlling Persons should be identified including:

- a. Identity [according to §101(35)];
- b. Nature and extent of control;
- c. Business planned;
- d. Pertinent financial information.

14. Insider and Affiliate Claims should be described including:

- a. Identity [§101(30) and §101(2)];
- b. Affiliation with debtor;
- c. Circumstances giving rise to the claim;
- d. Amount;
- e. Provide specific information as to the size of the claims of the insiders relative to the size of the claims of all others in that class. If there are no such claims, there should be a representation to that effect.

15. Insiders and Affiliate Transactions should be described including such things as rent paid to Insiders on leases of real or personal property. If there are no such transactions, there should be a representation to that effect.

16. Legal Proceedings should be described including:

- a. Identity of the parties;
- b. Nature of the claim;
- c. Factual basis;
- d. Court where action is pending;
- e. Relief sought;
- f. Present status;
- g. How adverse outcome would affect Plan.

If there are no pending legal proceedings, there should be a representation to that effect.

17. Disputed Claims should be described including:

- a. Identity of the claimant;
- b. Nature of the claim;
- c. Full amount and amount in dispute;
- d. Grounds for challenging (voidable preference, fraud, lack of collateral, etc.).

If there are no such claims, there should be a representation to that effect.

18. Tax Consequences of the reorganization should be included if they are material, including consequences to the debtor, its principals and the creditors.

19. Any Trustee or Examiner should be identified including:

- a. Identity;
- b. Reason for appointment;
- c. Party requesting appointment;
- d. Has report been prepared (attach report of summary).

20. The Creditors' Committee and the Equity Security Holder's Committee should be described including:

- a. Identity of members;
- b. Is acceptance of the Plan recommended;
- c. Continued involvement.

21. The Plan Proponent should be identified.

22. A Liquidation Analysis should be included providing:

- a. Alternatives;
- b. Administrative expenses, asset values, secured and unsecured claims;
- c. Assumptions made in connection with estimates;
- d. Time required;
- e. Valuations and appraisals;
- f. Possible actions relating to preferences, fraudulent

- conveyances, etc.
- g. See Exhibit C for an acceptable format.
23. The Vote Required for Approval should be explained including:
- a. Various classes;
 - b. Establish a record date.
24. Any Cram-Down provisions should be provided including a narrative summary of their terms and underlying reasons.
25. Guarantees of Secured Debts. The Disclosure Statement should disclose any guarantees of the debtor's obligations to secured creditors by principals. The fact that there are guarantees which might affect the secured creditor's right to proceed against the assets of the debtor or the guarantor in the alternative may affect a liquidation analysis. If there are no such guarantees, there should be a representation to that effect.
26. Administrative Expenses. The Disclosure Statement should include a breakdown of administrative expenses, including estimated professional fees, together with a description of the manner in which administrative fees are to be paid.
27. U.S. Trustee Fees. Specific provisions should be made for payment of U.S. Trustee fees imposed by 28 U.S.C §1930 until confirmation of the Plan. Fractional quarters are included. The fees are required to be paid by or upon the effective date of the Plan. 11 U.S.C. §1129(12).
28. Plan. The Plan is reviewed to ascertain that it fairly implements the intended actions set forth in the Disclosure Statement. This office does not pass judgment on the fairness or good business judgment set forth in the Plan; that is the duty of the Committee and individual creditors. The reviewer shall, however, ensure that adequate provision is made for timely payment of the U.S. Trustee fees required by U.S.C. §1930.

10. LOCAL RULES

There are local rules and operating orders governing the administration and procedure of bankruptcy cases in this district. A copy of the current rules may be obtained from the Clerk's office. Strict adherence to these rules and orders is required by the Court and by the U.S. Trustee.